

REMARKS

Claims 1-50 were pending in the application. The Examiner has required restriction between the following allegedly patentably distinct inventions:

- I. Claims 1-23 and 32-34, drawn to an indicator for characterizing human skin condition;
- II. Claims 24-31 and 35-40, drawn to a method of employing a flowable indicator for characterizing skin condition; and
- III. Claims 41-50, drawn to a system for characterizing skin condition.

The Examiner has withdrawn the Group III claims as being directed to a non-elected invention due to the previous prosecution on the merits of Groups I and II and requires election of either the invention of the Group I claims or the invention of the Group II claims. Applicants elect the claims of Group II, claims 24-31 and 35-40, with traverse.

Where the inventions as claimed are shown to be independent or distinct, the Examiner, in order to establish reasons for restriction, must explain why there would be serious burden on the Examiner if restriction is not required. MPEP § 802.02. For the purposes of advancing prosecution and not necessarily for the purpose of conceding to the requirement for restriction, Applicants will concede that the inventions can be considered to be patentably distinct but are at a loss as to how there would be a serious search and examination burden by having to examine all of the claims. The Examiner has not met the burden of establishing (A) separate classification, (B) separate status in the art when inventions are classifiable together, or (C) a different field of search.

The claims of Groups I and III have been identified by the Examiner as belonging to class 600, subclass 306 for Measurement of Skin Parameters, and Applicants submit that the claims of Group III properly belong the same class and subclass. Thus, the inventions do not have a separate classification. Further, the inventions do not have separate status in the art; they do not have divergent subject matter or a separate inventive effort. The indicator, method, and system inventions are all related to characterizing skin condition and include or are directed to an indicator for characterizing skin condition, which hardly qualifies as a separate status in the art. It follows that a different field of search is not required as a search for one invention would likely

Serial No. 10/709,183
Filed: April 20, 2004
Page 3 of 3

Examiner: Patricia C. Mallari
Group Art Unit: 3735

result in finding art pertinent to the other inventions, especially considering the same classification of the inventions.

There is good reason to maintain all of the inventions in the application for examination. Each invention relates to characterizing skin condition and includes or is directed to an indicator for characterizing skin condition. The number of inventions, *i.e.*, three, is not unreasonable. The burden of maintaining the inventions in the application is negligible and far outweighed by the burden of continuing examination of the withdrawn inventions in separate applications. Nevertheless, Applicants confirm a provisional election with traverse of the claims of Group II, claims 24-31 and 35-40.

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Prompt notification of allowability is respectfully requested.

Respectfully submitted,

J. DIRK VERMEULEN ET AL.

Dated: August 29, 2007

By: /G Thomas Williams/
G. Thomas Williams, Reg. No. 42,228
McGARRY BAIR PC
32 Market Avenue, SW, Suite 500
Grand Rapids, Michigan 49503
616-742-3500

G0319581